IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 4753 of 1995

Between:

Enugula Shankaraiah S/o. Rajaiah
R/o. Birsaipet Village, Utnoor Taluk,
Adilabad District.

..... PETITIONER

AND

1 The Special Deputy Collector, Tribunal Welfate Department
Adilabad, Adilabad District.
2 The District Collector & Agent to the State Government
Adilabad Adilabad District.
3 Sri Nara Narasimhloo S/o. Narasimhloo
R/o. Birsaipet, Utnoor Taluq,
Adilabad District.
4 The Government of Andhra Pradesh, Rep.by its Secretary Social Welfare (F) Department
Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction particularly one in the nature of Writ of Certiorari calling for the records relating to the order dt: 9/11/93 made in Memorandum No.175/F2/86-9, passed by the 4th Respondent and quash the same as illegal, arbitrary.

Counsel for the Petitioner: MR.A.PRABHAKAR RAO

Counsel for the Respondents: GP FOR SOCIAL WELFARE

The Court made the following :

THE HONOURABLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO.4753 OF 1995

ORDER:

This writ petition is filed, questioning the order dated 9.11.1993 in Memo No.175/F2/86-9, passed by the first respondent-revisional authority, rejecting the revision petition filed by the petitioner against the orders of eviction passed under the provisions of Andhra Pradesh (Schedule Areas) Land Transfer Regulation 1 of 1959.

The facts in brief are; that the petitioner claims to be the owner and possessor of the land admeasuring Ac.0.14 gts., Ac.1.03 gts., and Ac.0.34 gts situated in Survey Nos.4, 6 and 7/2 respectively of Ballampur village of Utnoor Mandal, Adilabad district. It is the case of the petitioner that he purchased the said land from the third respondent initially by entering into agreement on 6.1.1960, by obtaining necessary permission as required under Section 47 of the A.P.(Telangana Area) Tenancy of Agricultural Lands Act,1950. Subsequently, he also obtained registered sale deed on 23-3-1964 and he has been in continuous and uninterrupted possession. While things stood thus, the first respondent-Special Deputy Collector has initiated proceedings under the provisions of Andhra Pradesh (Scheduled Area) Land Transfer Regulation 1 of 1959, as amended by Regulation 1/70, for eviction of the petitioner, on the ground, that the transfer in his favour by the third respondent is in contravention of the provisions under Section 3(1) of the said Regulation. To the

show cause notice, defence was put-forth by the petitioner stating that the transfers were prohibited from 1-12-1963 prospectively and he has purchased the said land by entering into agreement of sale on 6.1.1960; as such, transfer in his favour is not hit by the said Regulation. But, such defence of the petitioner was not accepted by the respondent authorities on the ground that there is no valid agreement of sale, as much as the same was not executed on stamp paper; as such, the first respondent-Special Deputy Collector has passed order dated 5-8-1977 for eviction of the petitioner from the land in question and the said order is also confirmed by the appellate and revisional authorities.

It is submitted by the learned Counsel for the petitioner that the petitioner has purchased the said land, by entering into agreement of sale, from the third respondent on 6.1.1960; as such, the transfer in his favour is not in contravention of the Andhra Pradesh (Scheduled Area) Land Transfer Regulation 1 of 1959. It is further submitted by the learned Counsel that as defined in the Andhra Pradesh (Scheduled Area) Land Transfer Regulation 1 of 1959, a contract for sale is also transfer; in that view of the matter, as much as the petitioner has entered into agreement of sale on 6.1.1960, the same is not in contravention of the Andhra Pradesh (Scheduled Area) Land Transfer Regulation 1 of 1959. To substantiate his case, the learned counsel has placed reliance on the judgment of this Court in the case of **Gaddam Narsa Reddy and others Vs Collector, Adilabad District,** wherein the Full Bench of this Court held as follows:

> " The question whether transfers made prior to the coming into force of the amending Regulations II of 1963 and I of 1970 are not valid either for want of registration under the Indian Registration Act or for non-compliance of the provisions of Section 47 or Sec.50-B of the Hyderabad Tenancy and Agricultural Land Act and whether the transferee would be entitled to the protection of Section 53-A of the Transfer of Property Act, can only be gone into in a forum constituted for deciding such questions in respect of lands in Scheduled areas."

On the other land it is submitted by the learned Government Pleader that inasmuch as the registered sale deed was obtained in the year 1964, i.e., after the Andhra Pradesh (Scheduled Area) Land Transfer Regulation 1 of 1959 came into force prohibiting transfers from tribals to non-tribals; in that view of the matter, the transfer is contrary to the Andhra Pradesh (Scheduled Area) Land Transfer

Regulation 1 of 1959, and, there is no illegality in the order passed by the authorities.

Having regard to the above submissions it is to be seen, the petitioner has taken stand before the primary authority itself that he has purchased the land in question from the third respondent by entering into agreement of sale initially on 6.1.1960 and there is no denial of execution of such agreement on 6.1.1960 by the third respondent. However, the said defence of the petitioner was rejected only on the ground that the agreement of sale was not executed on stamp paper. As per the provisions under Section 2(g) of the Andhra pradesh (Scheduled Area)Land Transfer Regulation 1 of 1959, the contract of sale is also a transfer, for the purpose of the said Regulation. In that view of the matter, in the instant case, it is to be seen, the petitioner has purchased the land in question and came into possession by entering into agreement of sale on 6.1.1960; as such, the transfer in favour of the writ petitioner is not hit by the provisions of the Andhra Pradesh (Scheduled Area) Land Transfer Regulation 1 of 1959, as amended by Regulation 1 of 1970. The ratio laid down by the Full Bench of this Court in **Gaddam Narsa Reddy's case** (1 supra) also supports his plea. In the said judgment, the Full Bench of this Court has held that whether the said agreement was in accordance with the provisions of the Stamp Act or not is not for the authority under the provisions of the Andhra Pradesh (Scheduled Area) Land Transfer Regulation 1 of 1959, to decide the same for the purpose of passing an order of eviction. In this case, the agreement of sale was executed after obtaining permission as required under Section 47 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act,1950. In that view of the matter, it is proved that the petitioner has initially entered into agreement of sale on 6.1.1960 and inasmuch as the transfers were prohibited from tribals to non-tribals with effect from 1-12-1963, and, in the above said referred judgment, the Full Bench of this Court has already held that the Regulations have prospective in operation, the transfer in the instant case, in favour of the writ petitioner is not hit by the provisions of the Andhra Pradesh (Scheduled Area) Land Transfer Regulation 1 of 1959, as amended by Regulation 1 of 1970.

For the foregoing reasons, the writ petition is allowed and the eviction order passed against the petitioner, as confirmed by the appellate and revisional authorities, is set aside. No order as to costs.

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JUSTICE R.SUBHASH REDDY

Dated 18.1.2005.

Mdaa/msnr.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this theTuesday, the 18th day of January, two thousand and five.

Copy to:

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2 The District Collector & Agent to the State Government
Adilabad Adilabad District.
3. The Government of Andhra Pradesh, Rep.by its Secretary Social Welfare (F) Department
Secretariat, Hyderabad.

4. Two C.Cs to G.P.Social Welfare, High Court of A.p.,Hyderabad(OUT).

5. Two C.D.copies.